IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 2183 of 2007(I)

AGAINST THE ORDER IN CC 223/2006 IN
CMP.4574/2006 of JUDL.MAG.OF FIRST CLASS-I,MANJERI

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PETITIONER:

B.K.CHANDUNNI, BHAGAVATHI KALATHIL
HOUSE, VALLUBAMBARAM P.O., MONGAM VIA,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.SHIBILI NAHA

RESPONDENTS:
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1. ANIL BABU, S/O.NARAYANAN (LATE),
MANEERI HOUSE, KALIKAVU AMSOM,
THRIKKUNNASSERI DESOM, NILAMBUR TALUK.

2. SUNIL RAJ, S/O.NARAYANAN (LATE),
MANEERI HOUSE, KALIKAVU AMSOM,
THRIKKUNNASSERI DESOM, NILAMBUR TALUK.

3. SURESH, S/O.NARAYANAN (LATE),
MANEERI HOUSE, KALIKAVU AMSOM,
THRIKKUNNASSERI DESOM, NILAMBUR TALUK.

4. S.I. OF POLICE, KALIKAVU POLICE STATION.

5. C.I. OF POLICE,
WANDOOR.

6. STATE REP. BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.BABU S. NAIR
R4 TO R6 BY GOVERNMENT PLEADER SRI.S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF REGISTERED PARTITION DEED NO.2436/96 OF SRO, WANDOOR

EXT.P2 TRUE COPY OF JUDGMENT AND DECREE DT.31.3.04 IN AS 14/97.

EXT.P3 TRUE COPY OF ORDER OF THE MUNSIFF COURT, MANJERI IN EA 37/06 IN EP 25/06N DT.10.2.06.

EXT.P4 TRUE COPY OF COVERING LETTER AND ACKNOWLEDGEMENT CARD.

EXT.P5 TRUE COPY OF ORDER IN CMP 4574/06 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, MANJERI DT.16.12.06.

/TRUE COPY/

R. BASANT, J.

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W.P.C.No. 2183 of 2007 I

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Dated this the 14th day of March, 2007

JUDGMENT

On 11.8.2005 at about 9 a.m. an incident took place in an item of property, regarding which two crimes in the nature of case and counter case have been registered by the Kalikavu police as Crime Nos. 125 and 126 of 2005. The petitioner is the defacto complainant/informant in Crime No.125 of 2005. In both the crimes, after investigation, separate final reports have been filed and cognizance have been taken by the learned Magistrate. Petitioner is the defacto complainant in C.C.No. 223 of 2006, where respondents 1 to 3 are the accused. The petitioner went before the learned Magistrate and filed an application for further investigation under Section 173(8) Cr.P.C. The petitioner raised the grievance in that petition that a proper investigation has not been conducted by the Investigator. He pointed out that one Rajan had suffered an injury. He had been examined by a doctor. A wound certificate had been issued. But the police have not adverted to this aspect at all in the investigation.

2. He raised a further grievance that though the dispute about possession of the property is the core or crux of the dispute, the police had not applied their mind at all to the question of disputed possession. He further pointed out that there were litigations between the parties and decisions have been rendered by two courts accepting the version of the petitioner. Those documents, though sent to the police under registered post apprehending that the police may not properly advert to those documents, did not evoke any meaningful response from the police. They have not applied their mind to the disputed possession. In these circumstances it is prayed that powers under Section 173(8) Cr.P.C. may be invoked to direct further investigation.

3. There is no dispute that powers under Section 173(8) Cr.P.C. can be directed to be invoked by the Court suo moto or at the instance of the investigator or at the instance of the accused or at the instance of the defacto complainant. That question has now been concluded that the requisite satisfaction can be induced in the mind of the court by any one placing the relevant documents and circumstances. I shall carefully avoid any opinion on merits about the acceptability of the rival contentions. Suffice it to say that I am of the opinion that an alert

investigator must certainly have considered the question whether any other person had also suffered injuries in the course of the incident and such person was examined by a doctor. The investigator in this case has obviously not adverted to that aspect. A dispute regarding possession is the substratum of the dispute and as rightly pointed out by the learned counsel for the petitioner alert application of mind does not appear to have been made to this aspect also.

4. The learned counsel for the respondents submits that civil dispute has not attained finality and the matter is pending before this Court as a Second Appeal. There is a stay also, it is brought out.

5. Be that as it may, that cannot absolve the police of the responsibility to advert to the relevant facts and place relevant materials before the learned Magistrate. In this view of the matter, I am satisfied that there is merit in the submission of the learned counsel for the petitioner that a proper investigation has not been conducted and that the learned Magistrate had incorrectly refused to invoke the jurisdiction under Section 173(8) Cr.P.C.

6. This Writ petition is hence allowed. The petition filed by the petitioner for further investigation under Section 173(8) Cr.P.C.

shall stand allowed. The Investigating Officer shall expeditiously conduct further investigation and advert to the relevant aspects referred above and submit an appropriate further report under Section 173(8) Cr.P.C. The investigator shall conduct further investigation into both the crimes.

7. Hand over copy of the judgment to the learned counsel for the petitioner.

(R. BASANT)
Judge

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